

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

MICHAEL VENETEZ McRAE,)
Petitioner,)
v.) CV 121-021
AUSA TARA M. LYONS, for the United)
States of America,)
Respondent.)

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Upon review of the petition, the Court **REPORTS** and **RECOMMENDS** this case be **DISMISSED** without prejudice and **CLOSED**.

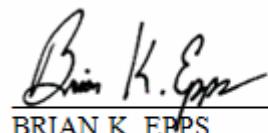
Petitioner is in pretrial detention awaiting trial in this District on an indictment. United States v. McRae, CR 119-125, doc. no. 1 (S.D. Ga. Sept. 12, 2019). Petitioner filed the instant § 2241 habeas petition, arguing improper venue, violation of his speedy trial rights, and denial of his right to proceed *pro se*. (Doc. no. 1.) The petition is subject to dismissal because it “plainly appears from the face of the petition that the petitioner is not entitled to relief in the district court.” Rule 4 of the Rules Governing Section 2254 Cases in

the United States District Courts¹; see also 28 U.S.C. § 2243 (requiring response to petition unless it appears applicant is not entitled to relief).

Because his underlying criminal case is pending and he awaits trial, the habeas petition is premature. See, e.g. Garcon v. Palm Beach Cnty. Sheriff's Office, 291 F. App'x 225, 226 (11th Cir. 2008) (*per curiam*) (affirming dismissal as premature § 2241 petition brought by pretrial detainee); Garey v. Fed. Det. Ctr., Miami, 180 F. App'x 118, 121 (11th Cir. 2006) (*per curiam*) (same); see also Goodman v. Doe, No. 3:16-CV-0112-TCB-RGV, 2016 WL 9444374, at *1 (N.D. Ga. Aug. 10, 2016), *adopted by*, Goodman v. Doe, No. 3:16-CV-112-TCB, 2016 WL 9444383 (N.D. Ga. Aug. 24, 2016) (same).

For the reasons set forth above, the Court **REPORTS** and **RECOMMENDS** this case be **DISMISSED** without prejudice and **CLOSED**.

SO REPORTED and RECOMMENDED this 5th day of March, 2021, at Augusta, Georgia.



BRIAN K. EPPS
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA

¹See Medberry v. Crosby, 351 F.3d 1049, 1062 (11th Cir. 2003) (explaining petition from state prisoner in custody pursuant to judgment of state court subject to 28 U.S.C. §§ 2241 and 2254).